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Paper No. 16

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OFFICE OF PETITIONS

In re Application of
Whitehurst, Alan R.
Application No. 09/821,009
Filed: March 29, 2001
Attorney Docket No. 8634.8/5144P

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed February 23, 2004, to revive the above-identified application.

The petition is Granted.

The above-identified application became abandoned for failure to reply in a timely manner in reply to the non-final Office action mailed February 13, 2003, which set a shortened statutory period for reply of three months. No extensions of time under the provisions of 37 CFR 1.136 have been obtained. Accordingly, the application became abandoned on May 14, 2003.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the \$475 extension of time submitted with the petition on February 23, 2004 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be refunded to petitioner in due course.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. If the person signing the instant petition desires to receive future correspondence regarding this application, the appropriate power of

attorney or authorization of agent must be submitted. While a courtesy copy of this decision is being mailed to the person signing the instant petition, all future correspondence will be directed to the address of currently of record until such time as appropriate instructions are received to the contrary.

The application file is being forwarded to Technology Center AU 3713 for further processing.

Telephone inquiries should be directed to the undersigned at (703) 308-6911.

A handwritten signature in cursive script, appearing to read "Latrice Bond".

Latrice Bond
Paralegal Specialist
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Parsons Behle & Latimer
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